

FEB 28 2001

Before the
Federal Communications Commission
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.622(b)

Table of Allotments

Digital Television Broadcast Stations

(Charlottesville, Virginia)

)

) MM Docket No. 00-240

) RM-9793

)

)

)

To: The Commission

**RESPONSE OF SHENANDOAH VALLEY EDUCATIONAL TELEVISION
 CORPORATION**

A clarifying response to the reply comments filed by CPBC¹ in this proceeding² is necessary.³ The Reply Comments fail to acknowledge the essential point made in both a meeting with CPBC and the Mass Media Bureau staff and in Shenandoah Valley's⁴ comments in this proceeding - that unique and extenuating circumstances justify the acceptance of Shenandoah Valley's proposal to retain DTV Channel *14 while granting CPBC's channel substitution request.

As background, on December 14 Shenandoah Valley met with Mass Media Bureau staff and counsel for CPBC to discuss Shenandoah Valley's proposal. In that meeting,

¹ Commonwealth Public Broadcasting Corporation.

² See Reply Comments of Commonwealth Public Broadcasting Corporation, MM Docket No. 00-0240; RM-9793 (filed February 5, 2001)(hereinafter, "Reply Comments").

³ Pursuant to Section 1.415(d) of the Commission's Rules, the Commission may authorize additional comments in this proceeding, and Shenandoah Valley requests that these comments be added to the record in the interest of a full and fair discussion of the positions for the first time set forth in the record in CPBC's reply comments.

⁴ Shenandoah Valley Educational Television Corporation.

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the parties discussed the staff's concern (which had been prompted by CPBC) that retaining DTV Channel *14 in the Table of Allotments would jeopardize or delay CPBC's request for DTV Channel*46. This was because of the fear that retaining DTV Channel *14 would cause CPBC's proposal to be treated as a request for a new allotment rather than a substitution for an existing allotment and as such might fail the mileage separation requirements of Section 73.623(d). The parties also discussed the unique circumstances justifying Shenandoah Valley's position that only by retaining DTV Channel *14 in this rulemaking could it gain access to DTV Channel *14 because once deleted, this channel could not be added back to the Table of Allotments in compliance with the Commission's rules.

Shenandoah Valley was optimistic following that meeting because the Mass Media Bureau staff seemed to be generally sympathetic with Shenandoah Valley's position, provided that CPBC's engineering concern could be satisfied. Shenandoah Valley's comments demonstrated how the engineering concern could be satisfied - indeed the engineering submitted by CPBC in its petition for rulemaking clearly demonstrates that the mileage separation concern does not apply to CPBC's proposed new channel, and Shenandoah Valley's own subsequent engineering studies confirmed this fact. Therefore, DTV Channel *46 could be added to the Table as a new allotment, and the concern about jeopardizing DTV Channel *46 was unfounded. Surprisingly, CPBC's Reply Comments ignore these engineering facts and instead simply ask that the Commission take no action on Shenandoah Valley's proposal, which is equivalent to killing it.

Even more surprisingly, however, CPBC's Reply Comments also reiterate the argument that Shenandoah Valley should simply file a new petition for rulemaking - a position which ignores past discussion of the parties and the Mass Media Bureau and Shenandoah

Valley's comments showing that a petition for rulemaking to re-allot DTV Channel *14 independent of this proceeding is not possible short of extraordinary action by the Commission. In prior discussions and in its comments, Shenandoah Valley demonstrated that not only could DTV Channel *46 be added to the Table in compliance with the Commission's rules, but that DTV Channel *14, although a current allotment, could not be added to the Table as a new allotment (short of extraordinary action by the Commission) because it would fail the very requirements DTV Channel *46 meets. These unique circumstances and the public interest in valuable noncommercial digital programming in Charlottesville the justify the Commission's consideration of Shenandoah Valley's proposal - which consideration can only be done in the context of this rulemaking proceeding.

CPBC's Reply Comments, however, ignore the facts, and even advance a new argument that Shenandoah Valley must file a new petition for rulemaking by noting that a recent Report and Order "may be dispositive" of this matter.⁵ The Report and Order, however, is not apposite. In the Report and Order, the Commission simply rejected an attempt to combine two unrelated channel substitution requests - either one of which could have been filed independently of the other. The proponent of the substitution requested that that proposal be appended to the original proceeding but did not attempt, unlike Shenandoah Valley, to demonstrate any extenuating or unique circumstances that would justify the consideration of its proposal outside of normal procedures, and the Commission correctly rejected that proposal. Specifically, Shenandoah Valley's proposal differs in two key respects from that addressed in the Report and

⁵ In that rulemaking proceeding the Commission considered Tri-State Public Teleplex, Inc.'s request for a channel substitution for its assigned DTV channel, and in comments to the rulemaking, Gilmore Broadcasting Corporation proposed that the Commission substitute Tri-State's original channel for Gilmore's assigned DTV channel, without Gilmore's filing its own request for a channel substitution. *See Report and Order, MM Docket No. 99-346, RM-9763 (Released January 31, 2001).*

Order. First, unlike the proponent in the rejected proposal, Shenandoah Valley does not ask that the channel be assigned to Shenandoah Valley, but simply seeks retention of the channel in Charlottesville so that it will be not be lost forever for Shenandoah Valley or any other potential applicant. Second, Shenandoah Valley's proposal, if made independently of this rulemaking, would be contrary to FCC procedural rules, and would therefore almost certainly be denied. Therefore, unlike the proposal rejected by the Report and Order, consideration of the request in this proceeding is entirely appropriate, timely and indeed the sole option.

One last fact continues to apply to this situation. No harm to any one would result from grant of Shenandoah Valley's request. No one would suffer meaningful interference and CPBC would be assigned DTV Channel *46 promptly, effectively and without adverse conditions. Formalities are getting in the way of an outcome that would be a win-win for all concerned, especially the public residing in the greater Charlottesville area.

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Accordingly, Shenandoah Valley requests that the Commission grant CVETC's request and retain the allotment for DTV Channel *14 in Charlottesville, Virginia, while at the same time promptly adding to the Table of Allotments DTV Channel *46 for CPBC's benefit.

Respectfully Submitted,



Jonathan D. Blake
 Cara Maggioni
 Covington & Burling
 1201 Pennsylvania Avenue, N.W.
 Washington, D.C. 20044-7566
 (202) 662-6000

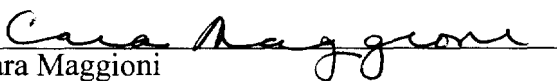
*Counsel for Shenandoah Valley
 Educational Television Corporation*

February 28, 2001

CERTIFICATE OF SERVICE

I, Cara Maggioni, hereby certify that a true and correct copy of the foregoing Comments was this February 28, 2001 sent by first-class mail, postage prepaid to the following:

Richard Bodorff, Esq.
Counsel for Central Virginia Educational Television Corporation
Wiley, Rein, and Fielding
1776 K. Street, NW
Washington, DC 20006



Cara Maggioni